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# Transportation and Motor Vehicles

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# Transportation and Motor Vehicles

## Transportation and Motor Vehicles; boating while under the influence of alcohol or drugs

Harbor and Navigation Code § 668; Health and Safety Code § 11837 (amended).

SB 515 (Marks); 1991 STAT. Ch. 923

Under existing law, any person who is convicted of operating a vessel<sup>1</sup> or manipulating water skis, an aqua plane or any similar device<sup>2</sup> while under the influence of alcohol or drugs is subject to a fine, probation, or a term of imprisonment.<sup>3</sup> The penalties under existing law increase if a person has been convicted of the same or a similar alcohol or drug-related offense during the previous seven years.<sup>4</sup> Under Chapter 923, if a person is convicted of a first offense of operating a vessel or manipulating a similar water device and probation is granted, the court may order the first offender to attend a specified alcohol or drug treatment program.<sup>5</sup> Chapter 923

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1. See CAL. HARB. & NAV. CODE § 651(c)(1)-(2) (West Supp. 1991) (definition of vessel).

2. See *id.* § 651(t) (West Supp. 1991) (definition of water skis, an aqua plane, or a similar device).

3. *Id.* § 668(c) (amended by Chapter 923). The fine for a violation of sections 655(b)-(e) (operating a vessel or manipulating any water skis, an aqua plane, or similar device while under the influence of intoxicating liquor, any drug, or the combined influence of intoxicating liquor and any drug) or section 655.4 (serving as a crew member on a charter boat while under the influence of alcohol or drugs) is not to exceed \$1,000, and the term of imprisonment is not to exceed six months. *Id.* § 668(d) (amended by Chapter 923). See *People v. Armitage*, 195 Cal. App. 3d 405, 422-23, 239 Cal. Rptr. 2d 515, 529 (1987) (discussing the construction and legislative intent involved in implementing the statute for boating under the influence of alcohol or drugs). For comparative state statutes see COLO. REV. STAT. § 28.35.030 (1990), OHIO REV. CODE ANN. § 1547.99 (Baldwin 1990), UTAH CODE ANN. § 73-18-12 (1990) (providing prohibitions for the operation of a boat or other vessel under the influence of alcohol or drugs).

4. CAL. HARB. & NAV. CODE § 668(d) (amended by Chapter 923). The fine for a second violation is not to exceed \$1,000. *Id.* The prison term increases from six months to a period not to exceed one year if a person is convicted of a second offense of sections 655(b)-(e), or if a person is convicted of a violation of sections 655(b)-(e) within seven years of a separate conviction of either section 191.5 or 192 of the Penal Code (driving under the influence of alcohol or drugs). *Id.* § 668(d) (amended by Chapter 923).

5. *Id.* § 668(c) (amended by Chapter 923). For the definition and structure of county alcohol and drug treatment programs see generally CAL. HEALTH & SAFETY CODE §§ 11795-11798.1 (West Supp. 1991) and CAL. CODE REGS. tit. 9, §§ 9400-9454, 9795-9846 (1991). See also CAL. HARB. &

further provides that if a person is convicted of either a second offense of operating a vessel or similar water device, or a similar offense within seven years of the first offense and probation is granted, the court may order a mandatory alcohol or drug treatment program.<sup>6</sup>

*SDW*

## **Transportation and Motor Vehicles; bumper safety standard stickers**

Vehicle Code § 24011.3 (new); § 40000.15 (amended).  
SB 265 (Kopp); 1991 STAT. Ch. 1219

Under existing law, manufacturers<sup>1</sup> and importers of new and leased passenger vehicles<sup>2</sup> are not required to post on the vehicle the maximum speed at which the vehicle sustains no bumper damage or other damage during federal bumper impact tests.<sup>3</sup>

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NAV. CODE §§ 11836-11838.11 (West Supp. 1991) (providing for the licensing of alcohol and drug treatment programs).

6. CAL. HARB. & NAV. CODE § 668(d) (amended by Chapter 923). The court may require a second offender to attend either an 18 or 30 month alcohol program. *Id.* The second offender must participate in the program in a manner satisfactory to the court. *Id.* § 668(d)(2) (amended by Chapter 923). If the second offender fails to complete the program in a satisfactory manner, this is deemed a violation of probation. *Id.*

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1. See CAL. VEH. CODE § 24011.3(d)(1) (enacted by Chapter 1219) (definition of manufacturer). *Cf. id.* § 672(a) (West 1987) (definition of vehicle manufacturer).

2. See *id.* § 465 (West 1987) (definition of passenger vehicle). Compare *id.* with § 24011.3(d)(2) (enacted by Chapter 1219) (expanding the definition of passenger vehicle to include any motor vehicle subject to impact testing conducted pursuant to Part 581 of Title 49 of the Code of Federal Regulations).

3. See generally *id.* §§ 24000-24016 (West 1985 & Supp. 1991) (regulating new and leased passenger vehicles). There is currently no bumper safety standard sticker regulation for either passenger or non-passenger vehicles. *Id.* See also 49 C.F.R. § 581.1- 581.9 (1982) (providing federal bumper impact standard). Under current bumper impact tests, the federal standard, with which all vehicles must comply, requires front and rear bumpers to withstand a collision at 2.5 miles per hour with no damage to the vehicle. *Id.* See generally 55 Fed. Reg. 24284 (1990) (explaining denial of petition by the Consumers Union to raise the bumper standard from 2.5 miles per hour to 5.0 miles per hour).

Under Chapter 1219, manufacturers or importers of new passenger vehicles for sale or lease in California are required to place a notice on the window or windshield of all vehicles stating the maximum speed at which the vehicle will sustain no damage<sup>4</sup> upon a collision with the front or rear bumpers of the vehicle.<sup>5</sup> Under Chapter 1219, any manufacturer who wilfully fails to affix this notice or any person who alters, defaces, or removes the notice is guilty of a misdemeanor.<sup>6</sup>

*SDW*

**Transportation and Motor Vehicles; child passenger seats**

Vehicle Code §§ 2430.2, 23116.1, 27363.5 (new); §§ 1808.1, 12810, 27360, 27362, 27363 (amended).

SB 1073 (Petrus); 1991 STAT. Ch. 1223

Support: American Academy of Pediatrics, Association of California Insurance Companies, Childhood Injury Prevention Coalition, California Peace Officers' Association, California Police Chiefs' Association, California State Sheriffs' Association, California Trial Lawyers Association, Ford Motor Company, National Highway Traffic Safety Institute, National Traffic Safety Institute

Under existing law, a parent or guardian of a child under four years of age, or a child who weighs less than 40 pounds, cannot

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4. See CAL. VEH. CODE § 24011.3(d)(3) (enacted by Chapter 1219) (definition of no damage).

5. *Id.* § 24011.3(a) (enacted by Chapter 1219). See *id.* § 24011.3(a)(1)-(2) (enacted by Chapter 1219) (mandating specific language required to be on bumper safety notices). See also *id.* § 24011.3(b) (enacted by Chapter 1219) (explaining the impact speed that is to be specified in the notice).

6. *Id.* § 24011.3(c)(1)-(2) (enacted by Chapter 1219). The punishment is a fine of not more than \$500. *Id.*

allow that child to be transported in a motor vehicle without the use of a child passenger seat restraining system.<sup>1</sup> Chapter 1223 revises the existing penalties for a violation of this requirement, and provides that a first offense is punishable with a fine of one hundred dollars, unless waived under specified circumstances.<sup>2</sup> Chapter 1223 also requires all hospitals to adopt a policy regarding the discharge of patients four years old or younger, or forty pounds or lighter, which shall include providing the parent or guardian with information concerning California's child seat laws, and which will require the parents to either show proof that they have a child seat, or to sign a release of the hospital's responsibility in this regard.<sup>3</sup>

Existing law states that it is unlawful for a manufacturer, wholesaler, or retailer to sell, offer for sale, or install in a vehicle any child passenger restraint system that does not comply with

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1. CAL. VEH. CODE § 27360(a), (b) (amended by Chapter 1223). *See generally* *People v. Thomas*, 159 Cal. App. 3d Supp. 18, 21-23, 206 Cal. Rptr. 84, 86-87 (1984) (dismissing the argument that requiring child restraint systems is an "unconstitutional interference with the fundamental right of family privacy and parental autonomy").

2. CAL. VEH. CODE § 27360(c)(1) (amended by Chapter 1223). Under prior law, a first conviction would not result in any fine, and could be dismissed if the person charged could prove either that they had obtained a child restraint system, or that they had attended a program providing education in the use of child restraint systems. 1985 Cal. Stat. ch. 1455, sec. 7, at 5158 (amending CAL. VEH. CODE § 27360). Under Chapter 1223, a first offense is punishable by a fine of \$100; however, this fine may be waived if the defendant is economically disadvantaged, and the defendant will then be referred to a child passenger restraint low-cost purchase or loaner program. CAL. VEH. CODE § 27360(c)(1) (amended by Chapter 1223). Chapter 1223 requires that all convictions under this section be reported to the Department of Motor Vehicles (DMV). *Id. See id.* § 1803 (West Supp. 1991) (describing the convictions under the California Vehicle Code which must be reported to the DMV). *See* L.A. Times, June 27, 1991, § J, at 2, col. 1 (discussing the requirements of the Downey Judicial District for dismissal of a violation of provisions requiring child restraint seats, which include attending a two-hour class on family safety in the car). Chapter 1223 states that a second or subsequent offense results in a fine of \$100, none of which can be waived by the court. CAL. VEH. CODE § 27360(c)(2) (amended by Chapter 1223). Existing law states that in case of emergency, or if the child is being transported in an authorized emergency vehicle, the required child seat need not be used, but the child must be secured with a standard safety belt. *Id.* § 27363(b) (amended by Chapter 1223). Existing law further provides that the court may exempt a particular class of children from the provisions of California Vehicle Code sections 27360 and 27362, if it is determined that the use of a child seat is impractical due to physical unfitness, medical condition, or size. *Id.* § 27363(a) (amended by Chapter 1223). Chapter 1223 changes the showing that must be made by a defendant, in order to exempt a class of children for the reasons stated above, from adequate to satisfactory. *Id.*

3. CAL. VEH. CODE § 27363.5 (enacted by Chapter 1223).

federal safety standards.<sup>4</sup> Chapter 1223 makes revisions in the allocation of fines collected for violations of this provision.<sup>5</sup>

*JWD*

**Transportation and Motor Vehicles; civil actions to collect parking penalties**

Vehicle Code §§ 40203.5, 40220, 40230 (amended).

AB 2170 (Epple); 1991 STAT. Ch. 329

Support: City of Los Angeles

Opposition: Judicial Council

Under existing law, parking violations are subject to fines by the court, including bail, penalties, and assessments,<sup>1</sup> and notice is given to the offending party by citation.<sup>2</sup> Under existing law, agencies charged with processing delinquent parking violations have several options for their collection.<sup>3</sup> In addition to these

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4. *Id.* § 27362(a) (West Supp. 1991). *See* Federal Motor Vehicle Safety Standards, 49 C.F.R. § 571.213 (1990) (describing, in detail, federal requirements for child passenger restraint systems). *See also* Buckling Up Baby Is Not Only Smart, Safe - It's the Law, Washington Times, July 20, 1990, sec. G, at 10 (restating an assertion of the National Safety Council that, if all children under the age of four rode in approved safety seats, about 53,000 accident-related injuries would be prevented each year).

5. CAL. VEH. CODE § 27362(b)(1)-(3) (amended by Chapter 1223). The fine allocations are identical to those provided for by California Vehicle Code section 27360, as amended by Chapter 1223. *Id.*

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1. *See* CAL. VEH. CODE § 40203.5 (West Supp. 1991) (stating that courts are to establish penalties pursuant to California Penal Code section 1269b and Chapter 12 of Title 8 of the Government Code).

2. *Id.* § 40202 (West Supp. 1991).

3. *Id.* § 40220 (amended by Chapter 329). *See id.* § 40215 (West Supp. 1991) (discussing the general duties of agencies processing delinquent parking violations). The agency can cancel the notice of violation, as long as an adequate record is made of the reasons for cancellation. *Id.* § 40220(a) (amended by Chapter 329). Additionally, the agency can file an itemization of unpaid tickets with the DMV, who will collect them with the registration fees for the car, or file a complaint with the court, which then may issue a warrant. *Id.* § 40220(b)-(c) (amended by Chapter 329).

options, Chapter 329 allows a processing agency<sup>4</sup> to bring a civil action to collect unpaid fines accrued by an individual if they total more than four hundred dollars.<sup>5</sup>

JWD

## **Transportation and Motor Vehicles; disabled person placards**

Vehicle Code §§ 22511.55, 22511.56 (new); §§ 4461, 40000.7 (amended).

SB 234 (Kopp); 1991 STAT. Ch. 894

Under existing law, disabled persons<sup>1</sup> or disabled veterans<sup>2</sup> are permitted to park in certain designated areas<sup>3</sup> subject to specified exceptions.<sup>4</sup> Further, disabled persons or veterans may apply to the

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4. See *id.* § 40200.6 (West Supp. 1991) (definition of processing agency).

5. *Id.* § 40220(d) (amended by Chapter 329). If a processing agency obtains a judgment in its favor, it may contract with a collection agency to collect the amount of the judgment. *Id.* A similar program has been implemented in Seattle, with good initial results. City Gets A Fine Pay Off by Hiring Collection Firm - Old Parking Tickets Bring In \$744,000, *The Seattle Times*, July 8, 1991, at A1. Los Angeles has well over \$200 million in unpaid parking tickets, and has pursued several techniques, including placing immobilizing "boots" on cars with five or more unpaid parking tickets, with limited success. City Turns Screws On Parking Scofflaws, *L.A. Times*, July 20, 1990, § B, at 3, col. 1. The city of Glendale has intermittently used a program in which cars with five or more unpaid parking tickets are towed. Repeat Parking Offenders Get Back in Tow, *L.A. Times*, May 24, 1990, § J, at 1, col. 5.

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1. See CAL. VEH. CODE § 295.5 (West Supp. 1991) (definition of disabled person).

2. See *id.* § 295.7 (West Supp. 1991) (definition of disabled veteran).

3. See *id.* § 22511.5(a)(1)-(3) (amended by Chapter 893) (providing for the zones which a disabled person may lawfully park for an unlimited period of time).

4. *Id.* § 22511.5(a)(1) (amended by Chapter 893). See *id.* §§ 22511.7, 22511.8 (West Supp. 1991) (providing for procedures by which local authorities may restrict parking for disabled persons only). Disabled persons may park in other reserved zones which are not solely restricted for handicapped parking such as metered parking and any zone restricted as to the length of time. *Id.* § 22511.5 (a)(1)-(2) (amended by Chapter 893). Disabled persons may not park in any zone which state law absolutely prohibits stopping, parking, or standing of all vehicles or which the law reserves for special types of vehicles. *Id.* § 22511.5(a)(3) (amended by Chapter 893). The apparent intent of the Legislature in having the placard placed on the dash board of the vehicle is to encourage the use of placards because they provide a law enforcement officer with an easily recognizable symbol for distinguished vehicles qualified for restricted parking. *Id.* § 22511.55(a)(1) (amended by Chapter

Department of Motor Vehicles<sup>5</sup> for a distinguishing placard which must be displayed on the dashboard of a vehicle to enable that person to park in designated areas.<sup>6</sup> Chapter 894 provides that a disabled person placard must be displayed on the rear view mirror of a car and if no rear view mirror exists, then on the dashboard of the vehicle.<sup>7</sup> Under Chapter 894, any person using a disabled person placard must present identification and evidence of the issuance of the placard to a law enforcement officer upon the request of the officer.<sup>8</sup>

Existing law permits the use of a disabled person placard by another person for the purpose of transporting a disabled person or a disabled veteran.<sup>9</sup> Chapter 894 restricts existing law by permitting the use of a disabled person placard by another for the purpose of transporting a disabled person or disabled veteran only if the person is in the presence or reasonable proximity of the disabled person or disabled veteran.<sup>10</sup>

Under prior law, a person who was temporarily disabled could apply to the Department of Motor Vehicles and receive a

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894).

5. See *id.* §§ 1500-1508 (West 1987), §§ 1650-1677 (West 1987 & Supp. 1991) (providing for the organization, powers and duties of the Department of Motor Vehicles).

6. 1989 Cal. Legis. Serv. ch. 554, sec. 3, at 1676-1677 (amending CAL. VEH. CODE § 22511.5) (repealed by Chapter 894); CAL. VEH. CODE § 22511.55 (a)-(d) (enacted by Chapter 894).

7. CAL. VEH. CODE § 22511.5(a)(1) (enacted by Chapter 894). Chapter 894 requires on all disabled person placards, the use of the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641, commonly known as the "wheelchair symbol." *Id.* Further, Chapter 894 requires on the placards instructions for lawful use of the placards as well as a summary of penalties for their unlawful use. *Id.*

8. *Id.* § 22511.56(a) (enacted by Chapter 894). If a person fails to present the identification upon the request of the officer, this creates a rebuttable presumption that the placard is being misused. *Id.* § 22511.56(b) (enacted by Chapter 894). If the placard is being misused, in addition to any other penalty, the officer may confiscate the placard. *Id.* § 22511.56(c) (enacted by Chapter 894).

9. *Id.* § 4461(b) (amended by Chapter 894).

10. *Id.* Chapter 894 creates a new crime by making a violation of section 4461 a misdemeanor offense. CAL. VEH. CODE §§ 4461(c); 40000.7(g) (amended by Chapter 894). Chapter 894 was introduced apparently in response to much fervor concerning the increasing abuse of disabled person placards by non-disabled persons and an increase in the amount of non-disabled persons parking in restricted parking zones. Telephone conversation with Steve Schaindt, Consultant to Senator Kopp, October 19, 1991 (notes on file at the Pacific Law Journal). For newspaper and magazine articles which describe the increasing abuse and which assisted in prompting the inception of Chapter 894 see generally *Invalid Invalids*, TIME MAGAZINE 33 (April 29, 1991); The San Francisco Chronicle, April 20, 1991, at A1, col. 1; The Los Angeles Times, April 12, 1991, at B1, col. 2.



temporarily disabled person placard for a period of less than a year.<sup>11</sup> Chapter 894 reduces the time period that one may possess a temporarily disabled person placard to a period of less than six months.<sup>12</sup>

SDW

## **Transportation and Motor Vehicles; disabled person placards**

Vehicle Code §§ 4463, 42001.5 (amended).  
AB 1346 (Woodruff); 1991 STAT. Ch. 630

Under existing law, any disabled person<sup>1</sup> or disabled veteran<sup>2</sup> may apply for and receive<sup>3</sup> a distinguishing license plate or placard which allows the person to park in various spaces designated for disabled persons.<sup>4</sup> Existing law further provides that the court must impose a fine on any person who unlawfully parks in or blocks a space designated for disabled persons.<sup>5</sup> Under

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11. 1989 Cal. Legis. Serv. ch. 554, sec. 3, at 1676-1677 (amending CAL. VEH. CODE § 22511.5) (repealed by Chapter 894).

12. CAL. VEH. CODE § 22511.55(c) (enacted by Chapter 894).

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1. See CAL. VEH. CODE § 295.5 (West Supp. 1991) (definition of disabled person).

2. See *id.* § 295.7 (West Supp. 1991) (definition of disabled veteran).

3. See *id.* § 22511.55 (enacted by Chapter 894) (providing that the application must be made to the Department of Motor Vehicles). See *id.* §§ 1500-1508 (West 1987), §§ 1650-1677 (West 1987 & Supp. 1991) (providing the organization, powers and duties of the Department of Motor Vehicles).

4. *Id.* § 22511.5(a)(1) (amended by Chapter 893). See *id.* § 22511.5(a)(1)(A)-(3) (amended by Chapter 893) (listing designated areas that a person with a disabled person placard or license plate may lawfully park). The fee to apply for a disabled person placard or license plate is six dollars. *Id.* § 22511.55(a)(3) (enacted by Chapter 894).

5. *Id.* § 42001.5 (amended by Chapter 630). The fine for unlawfully parking in a space restricted for disabled persons is no less than \$100. *Id.* See *id.* § 22507.8 (West Supp. 1991) (listing the prohibitions against parking in a space designated for disabled persons). Many other states provide for similar procedures for distributing disabled person placards, and provide for penalties for unauthorized use of these placards. See, e.g., ARIZ. REV. STAT. ANN. § 28-884 (1990); COLO. REV. STAT. ANN. § 42-4-1109 (1990); FLA. STAT. § 320.0848 (1990); IND. CODE ANN. § 4-28-10-24 (1990); IOWA CODE § 321L.4 (1989); KAN. STAT. ANN. § 8-1,130 (1991); KY. REV. STAT. ANN. § 189.456 (Baldwin 1990); TENN. CODE ANN. § 55-21-103 (1990).

Chapter 630, the court is given the discretion to suspend the fine of a person who possesses, but fails to display, a valid placard and is convicted of parking in or blocking a space restricted to disabled persons and disabled veterans.<sup>6</sup> Chapter 630 also stipulates that any person who lends a placard to a person who is not entitled to use the placard may be convicted of a misdemeanor offense.<sup>7</sup>

*SDW*

## **Transportation and Motor Vehicles; general revisions**

Education Code § 17912.3 (amended); Public Utilities Code § 99318.6 (repealed); §§ 99313.3, 99313.6, 99314.5, 99315, 99317.9, 99318 (amended); Streets and Highways Code §§ 146.5, 2104 (amended); Vehicle Code §§ 8058, 14102, 14107, 14108, 14109, 14110, 14111, 20019, 20020 (repealed); §§ 230.5, 471, 9706.1, 14104.2, 14104.7, 14910, 42001.12 (new); §§ 286, 375, 516, 655, 1803, 9905, 9911, 10751, 12505, 12806, 12810, 12818, 14100, 14101, 14103, 14104, 14104.5, 14105, 14105.5, 14106, 14112, 15300, 24400, 25258, 25259, 27360, 27365, 34501.12, 34506.4, 34507.5, 35401, 35401.3, 40509, 40509.5, 40900, 42001 (amended).

AB 37 (Katz); 1991 STAT. Ch. 13

Under existing law, it is illegal for anyone to knowingly possess a vehicle<sup>1</sup> or component part whose manufacturer's identification number has been removed, defaced, altered, or

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6. CAL. VEH. CODE. § 42001.5 (amended by Chapter 630).

7. *Id.* § 4463(d) (amended by Chapter 630).

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1. See CAL. VEH. CODE § 670 (West 1987) (definition of vehicle).

destroyed unless an identification number<sup>2</sup> has been assigned by the Department of Motor Vehicles (Department)<sup>3</sup> in lieu of the manufacturer's identification number.<sup>4</sup> Existing law further provides that whenever such a vehicle or component part comes into the custody of a peace officer, it must be destroyed, sold, or otherwise disposed of according to court order.<sup>5</sup> Chapter 13 expands existing law by applying these provisions to any serial or identification number affixed to the vehicle or to a component part.<sup>6</sup>

Under existing law, a person is prohibited from driving a motor vehicle<sup>7</sup> on a highway<sup>8</sup> unless the person holds a California Driver's License or is specifically exempted from possessing a license.<sup>9</sup> Existing law further provides that in order to obtain a

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2. See *id.* § 2805(a) (West Supp. 1991) (defining identifiable vehicle components for purposes of locating stolen vehicles). Cf. ILL. VEH. CODE § 1-129 (West 1987) (definition of identification number). See also *People v. Neville*, 42 Ill. App. 3d 9, 12, 355 N.E. 2d 179, 182-83 (1976) (construing ILL. VEH. CODE § 1-129, defining "identification number", to include the numbers and letters on a vehicle designated by the Secretary of State for the purposes of identifying the vehicle and including the manufacturer's identification number).

3. See CAL. VEH. CODE §§ 1650-1678 (West 1987 & Supp. 1991) (providing generally for the powers and duties of the Department of Motor Vehicles).

4. *Id.* § 10751(a) (amended by Chapter 37). See *State v. Derrickson*, 31 Del. 342, 343, 114 A. 286, 287-88 (1921) (holding that the offense of removing, altering, or destroying an identification number has two elements: (1) The fact of possession of the motor vehicle with the distinguishing numbers removed; and (2) possessing it with the purpose of concealing or destroying the identification of the vehicle). See generally 15 U.S.C.A. §§ 2021-2034 (West 1986 & Supp. 1991) (Federal Motor Vehicle Theft Prevention Act) (requiring manufacturers to affix vehicle identification numbers to major component parts of automobiles in order to discourage theft).

5. CAL. VEH. CODE § 10751(b) (amended by Chapter 13). Existing law provides that no court order providing for the disposition of a vehicle or component part that comes into the custody of a peace officer will be issued unless the person from whom the property was seized and all claimants to that property are provided a hearing within 90 days of seizure. *Id.*

6. *Id.* § 10751(a) (amended by Chapter 13).

7. See *id.* § 415 (West Supp. 1991) (definition of motor vehicle).

8. See *id.* § 360 (West 1987) (definition of highway).

9. *Id.* § 12500(a) (West Supp. 1991). See *id.* § 12501 (West Supp. 1991) (providing exemptions from the requirement of possessing a valid driver's license). See also *id.* § 310 (West 1987) (definition of driver's license). Existing law provides for certain limited exceptions for nonresident drivers who do not possess valid California Driver's licenses. *Id.* § 12502 (West Supp. 1991). The exceptions are as follows: (1) A nonresident over 18 years of age possessing a valid driver's license of a foreign jurisdiction; and (2) a nonresident possessing a valid driver's license issued by the Diplomatic Motor Vehicle Office of the Office of Foreign Missions of the United States Department of State. *Id.*

California Driver's License, a person must be a resident<sup>10</sup> of California.<sup>11</sup> Chapter 13 redefines residency, for the purposes of the provisions governing the issuance of California Driver's Licenses,<sup>12</sup> as a person's state of domicile and further, defines domicile.<sup>13</sup>

Under existing law, the Department has the discretion to refuse to issue or renew a driver's license of any person<sup>14</sup> who is incapable of operating a motor vehicle safely because of alcoholism, drug abuse or addiction, or lapses in consciousness and other mental disabilities.<sup>15</sup> Chapter 13 explicitly provides that the Department may use any available relevant information to make its determination as to the issuance or renewal of a driver's license of a person who has suffered lapses of consciousness or other mental or physical disabilities.<sup>16</sup>

Under existing law, the Department may refuse to renew<sup>17</sup> the driver's license of a person who is classified as a negligent operator<sup>18</sup> of a motor vehicle.<sup>19</sup> Existing law establishes a point system for identifying negligent operators.<sup>20</sup> Under prior law, one

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10. See *id.* § 516 (amended by Chapter 13) (defining resident to include any person manifesting an intent to live or be located in California on more than a temporary or transient basis).

11. See *id.* § 12505(a) (amended by Chapter 13) (providing that any person entitled to an exemption is required to obtain a license from the department within 10 days of becoming a resident).

12. See *id.* §§ 12500-13008 (West 1987 & Supp. 1991) (providing the Vehicle Code sections concerning the issuance, expiration, and renewal of California Driver's Licenses).

13. *Id.* § 12505 (amended by Chapter 13). Chapter 13 defines state of domicile as the state where the person has a fixed, true, permanent home and principal residence to which the person manifests an intent to return. *Id.* § 12505(a) (amended by Chapter 13). The presumption of residency in California may be rebutted by evidence that the person's primary residence is in another state. *Id.* § 12505(b) (amended by Chapter 13).

14. See *id.* § 470 (West 1987) (definition of person).

15. *Id.* § 12806 (amended by Chapter 13). See generally *Johnson v. Mead*, 191 Cal. App. 3d 156, 159, 236 Cal. Rptr. 277, 279 (1987) (holding that the Department has the discretion to not issue a driver's license to an alcoholic or chronic drinker).

16. CAL. VEH. CODE § 12806(c) (amended by Chapter 13).

17. See *id.* § 12814 (West 1987) (detailing procedures for the renewal of a driver's license).

18. See *id.* § 12810.5(a) (West Supp. 1991) (detailing the number of traffic violation points required for a presumption of negligent operation).

19. *Id.* § 12809(e) (West Supp. 1991).

20. See *id.* § 12810 (amended by Chapter 13) (providing various point allocations for violations of the Vehicle Code).

point was assessed for a conviction for driving with a revoked<sup>21</sup> or suspended<sup>22</sup> license.<sup>23</sup> Chapter 13 instead requires two points to be charged for driving with a revoked or suspended license.<sup>24</sup>

Under prior law, a person whose license was revoked or suspended could demand either a formal<sup>25</sup> or informal hearing<sup>26</sup> unless Department action was made mandatory by the Vehicle Code, or unless the person had previously failed to appear.<sup>27</sup> Chapter 13 deletes the formal and informal hearing procedures, instead providing for a single prescribed hearing procedure if the action was not made mandatory by the Vehicle Code or if the person has not previously failed to request a hearing within the specified time limit.<sup>28</sup>

Under existing law, magistrates and court clerks are authorized to notify the Department whenever a person violates a written

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21. See *id.* § 13101 (West 1987) (providing that, when referring to a driver's license, revocation is defined as a person's privilege to drive a motor vehicle being terminated, thereby requiring the obtaining of a new driver's license when the period of termination ends).

22. See *id.* § 13102 (West 1987) (defining suspension as the temporary withdrawal of a person's privilege to drive a motor vehicle).

23. 1984 Cal. Stat. ch. 667, sec. 9, at 2451 (enacting CAL. VEH. CODE § 12810) (amended by Chapter 13).

24. CAL. VEH. CODE § 12810(i) (amended by Chapter 13).

25. See 1968 Cal. Stat. ch. 1063, sec. 2, at 2063 (amending CAL. VEH. CODE § 14107) (repealed by Chapter 13) (definition of formal hearing).

26. See 1961 Cal. Stat. ch. 58, sec. 35, at 1009 (amending CAL. VEH. CODE § 14104) (amended by Chapter 13) (definition of informal hearing).

27. 1959 Cal. Stat. ch. 1996, sec. 20, at 4626 (amending CAL. VEH. CODE § 14100) (amended by Chapter 13); 1959 Cal. Stat. ch. 3, sec. 14101, at 1631 (enacting CAL. VEH. CODE § 14101) (amended by Chapter 13). See generally *Burkhart v. Department of Motor Vehicles*, 124 Cal. App. 3d 99, 110, 177 Cal. Rptr. 175, 181 (1981) (holding that the Federal Due Process Clause does not invalidate the statutory hearing scheme provided for in California Vehicle Code sections 14100 through 14112).

28. CAL. VEH. CODE § 14100(a) (amended by Chapter 13). An application for a hearing does not stay the action by the Department for which the notice is given. *Id.* § 14100(b) (amended by Chapter 13). The failure to respond to a notice within 10 days constitutes a waiver of the right to a hearing and allows the Department to take action without a hearing to reopen the question. *Id.* § 14103 (amended by Chapter 13). If the Department grants the hearing it must fix the time and place for the hearing and give 10 days notice which includes a statement of the discovery rights of the applicant. *Id.* § 14104 (amended by Chapter 13). Prior to the hearing, or after it has commenced, the Department or its representative must issue subpoenas at the request of any party for the attendance of persons or for the production of documents at the hearing. *Id.* § 14104.5 (amended by Chapter 13). See generally *id.* §§ 14105.5, 14106, 14112 (amended by Chapter 13) (specifying general procedures for hearings).

promise to appear<sup>29</sup> or fails to pay a fine for a violation of the Vehicle Code.<sup>30</sup> Chapter 13 expands existing law by authorizing magistrates and court clerks to notify the Department regarding any violation relating to the safe operation of a vehicle.<sup>31</sup> Chapter 13 also allows the court to notify the Department of the total amount of a person's unpaid fines that do not require mandatory court appearances rather than requiring the person to first appear in court to pay those fines.<sup>32</sup>

TD III

**Transportation and Motor Vehicles; license suspension for habitual truancy**

Vehicle Code § 13202.7 (new); § 13202.7 (amended and renumbered).

SB 558 (Green); 1991 STAT. Ch. 425

Under existing law, the court is required to suspend,<sup>1</sup> restrict,<sup>2</sup> or delay<sup>3</sup> a minor's<sup>4</sup> driving privilege if the minor is convicted of an alcohol or drug related offense.<sup>5</sup> Under Chapter 425, the court

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29. See *id.* § 40500(a) (West Supp. 1991) (providing that when a person is arrested for a violation of the Vehicle Code which does not constitute a felony, the arresting officer must provide a written notice to appear in court or before a person authorized to receive a bail deposit).

30. *Id.* §§ 40509(a)-(b), 40509.5(a) (amended by Chapter 13). Notice must be given within 60 days of the failure to appear. *Id.* §§ 40509(a); 40509.5(a) (amended by Chapter 13).

31. *Id.* §§ 40509(a), 40509.5(a) (amended by Chapter 13).

32. *Id.* §§ 40509(b), 40509.5(b) (amended by Chapter 13).

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1. See CAL. VEH. CODE § 13202.5(a) (West Supp. 1991) (providing that the suspension is for one year).

2. See *id.* § 13202.5(c) (West Supp. 1991) (listing restrictions the court may place upon the minor's driving privileges).

3. See *id.* § 13202.5(a) (West Supp. 1991) (stating that if a minor is not old enough to have driving privileges, the court must delay the issuance of the minor's driver's license for one year).

4. See *id.* (defining a minor as a person of at least 13 years of age, yet under the age of 21).

5. *Id.* § 13202.5 (West Supp. 1991). See *id.* § 13202.5(d) (West Supp. 1991) (listing alcohol and drug-related offenses).

has the option of suspending<sup>6</sup> or delaying<sup>7</sup> a minor's driving privilege if the minor<sup>8</sup> is a habitual truant<sup>9</sup> and a ward of the court.<sup>10</sup>

SDW

## **Transportation and Motor Vehicles; improper towing of vehicles**

Civil Code §§ 3068.1, 3070 (amended); Vehicle Code §§ 22513, 22658 (amended).

SB 887 (Lockyer); 1991 STAT. Ch. 1004

Support: Association of California Insurance Companies, California Trial Lawyers Association, California Bankers Association

Under existing law, anyone who legally tows and stores a vehicle has a possessory lien on the vehicle for the amount which is due for such towing and storage.<sup>1</sup> Chapter 1004 clarifies existing law, and provides that the amount a lienholder may charge for storage and safekeeping of a vehicle for twenty-four hours or less

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6. See *id.* § 13202.7(a) (enacted by Chapter 425) (providing that the minor's driving privilege may be suspended by the court for one year).

7. See *id.* (mandating that if the minor is not old enough to have driving privileges, the court may delay the issuance of the minor's license for one year).

8. See *id.* (defining a minor for the purposes of Chapter 425 as a person who is at least 13, but less than 18 years of age).

9. See CAL EDUC. CODE § 48262 (West 1978) (definition of habitual truant).

10. CAL. VEH. CODE § 13202.7(a) (enacted by Chapter 425). When a minor's driving privileges are suspended, the court may require the minor to surrender all driver's licenses to the court. *Id.* § 13202.7(b) (enacted by Chapter 425). The court may take into consideration any family or medical hardship that may exist when considering whether to suspend the minor's driving privilege. *Id.* § 13202.7(c) (enacted by Chapter 425). The suspension, restriction, or delay of a minor's driver's license pursuant to Chapter 425 is in addition to any other penalty imposed by law. *Id.* § 13202.7(d) (enacted by Chapter 425). See CAL WELF. & INST. CODE § 601 (West 1984) (definition of ward of the court).

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1. CAL. CIV. CODE § 3068.1(a) (West Supp. 1991). The lien comes into existence on the date of possession of the vehicle, and possession arises when the vehicle is removed and is in transit. *Id.*

be no more than what the person would charge for one day of storage and safekeeping.<sup>2</sup>

Under existing law, it is a misdemeanor for anyone to obtain possession of a vehicle which is subject to a lien by trick, fraud, or device.<sup>3</sup> Existing law also states that it is a misdemeanor for anyone claiming a lien on a vehicle to knowingly violate any of the provisions regarding liens on vehicles.<sup>4</sup> Chapter 1004 additionally provides that anyone who improperly causes a vehicle to be towed or removed<sup>5</sup> has committed a misdemeanor.<sup>6</sup>

Existing law states that the owner or operator of a tow truck may stop on the highway for the purposes of rendering aid under certain circumstances.<sup>7</sup> Chapter 1004 requires that if the owner or operator of a tow truck stops at a disabled vehicle, or scene of an accident, with the purpose of soliciting a towing engagement, it shall be a misdemeanor<sup>8</sup> unless the tow truck has been summoned there, or flagged down, by the owner or operator of the disabled

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2. *Id.* This rule applies where a request for release of the vehicle is made within 24 hours of its impoundment. *Id.* If a request for the release of a vehicle is made 24 hours or more after the vehicle is placed in storage, the owner can be charged for each day, or portion thereof, that the vehicle is in storage. *Id.*

3. *Id.* § 3070(b) (amended by Chapter 1004).

4. *Id.* § 3070(c) (amended by Chapter 1004).

5. *See id.* § 3070(d)(2) (amended by Chapter 1004) (stating that improperly causing a vehicle to be towed or removed, for purposes of Chapter 1004 includes, but is not limited to, the following acts: (1) An intentional failure to comply with requirements of the California Vehicle Code sections 10650, 10652.2, or 10655, relating to records of towed vehicles; (2) intentional misrepresentations in records of towed vehicles which must be kept pursuant to California Vehicle Code section 10650, subdivision b; (3) intentional failure to comply with California Vehicle Code section 22658, with regard to removal of vehicles from private property; (4) failure to present a form for signature, when obtaining authorization for the removal of the vehicle, that outlines the charges and the name of the storage facility to the owner of the vehicle or the officer at the scene of an accident; (5) failure by the owner or operator of a vehicle storage facility to display a sign in that facility of a minimum size of 17 by 22 inches, with letters of at least one inch in height, that explains all charges and fees of the facility, including the minimum daily storage rate; (6) making repairs on a vehicle while in storage without first giving a written estimate to, and gaining the consent of, the owner; and (7) paying or providing other consideration to the owner of a premises from which a vehicle is towed, in exchange for the privilege of towing that vehicle).

6. *Id.* § 3070(d)(1) (amended by Chapter 1004).

7. CAL. VEH. CODE § 22513 (West Supp. 1991).

8. *See id.* § 42002 (West Supp. 1991) (stating that where punishment for violation of a Vehicle Code section is prescribed as a misdemeanor, and no other penalty is stated therein, punishment shall consist of a fine not to exceed \$1000, six months in county jail, or a combination of these penalties).



vehicle or by a law enforcement officer or public agency with the power to order the removal of vehicles.<sup>9</sup> Chapter 1004 does not apply to vehicles owned and operated by a motor club,<sup>10</sup> which stop to render services gratuitously, provided that these services do not include towing.<sup>11</sup>

Existing law provides that vehicles unlawfully parked on private property may be removed under certain circumstances.<sup>12</sup> Chapter 1004 states that a towing company cannot remove a

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9. *Id.* § 22513(b) (amended by Chapter 1004). Chapter 1004 further provides that where there is an injury as a result of an accident, or a vehicle has been left unattended, a failure of the tow truck owner or operator to gain authorization for the removal of the vehicle from the owner or operator of the vehicle, or from an agency or law enforcement officer, is also a misdemeanor. *Id.* Chapter 1004 may be an attempt to combat the dangers and fraud caused by "bandit" or "bird dogger" tow truck drivers, who race to the scene of an accident to procure towing engagements. *See* *Boy Killed When Car is Rammed by Tow Truck*, L.A. Times, Feb. 12, 1991, § B, at 1, col. 5. Such unlicensed tow truck drivers have caused many accidents, and many deaths, in rushing toward accident scenes. *Id.* "Bird dogging" also results in insurance fraud, as unlicensed tow truck operators will often encourage accident victims to file false claims. *Id.* Insurance fraud tied to these practices costs the California insurance industry an estimated \$500 million a year. Towing's "Bird Doggers" Race Streets for Business, L.A. Times, Mar. 6, 1991, § A, at 1, col. 1. *See generally* Halloran, et al v. Spillane's Servicenter, Inc., 41 Conn. Supp. 484, 587 A.2d 176 (Conn. 1990) (describing the heavy-handed tactics some towing companies use in obtaining towing engagements and dealing with people whose vehicles are in their possession).

10. *See* CAL. INS. CODE § 12142 (West 1988) (definition of motor club).

11. CAL. VEH. CODE § 22513 (amended by Chapter 1004). Chapter 1004 states that a motor club-affiliated vehicle may provide towing services only if necessary to remove the vehicle to the nearest safe shoulder. *Id.* The owner or operator of the motor club-affiliated vehicle cannot refer a motorist to a towing company, unless the motorist is a member of the motor club, the motorist is referred to a towing company that is under contract with the motor club, and the referral is made through a dispatch facility owned and operated by the motor club. *Id.* Chapter 1004 does not apply to tow trucks employed by law enforcement or other agencies to remove abandoned vehicles, or to provide emergency road service. *Id.* § 22513(d)(2)-(3) (amended by Chapter 1004).

12. *Id.* § 22658 (West Supp. 1991). A vehicle may be removed from private property if: (1) there is a sign, at least 17 by 22 inches in size, at all entrances to the property stating that the property is not for public parking and stating that vehicles will be removed at the owner's expense; (2) the vehicle has been issued a notice of parking violation and the car is still in the same place 96 hours later; (3) the vehicle is on public property and lacks an engine, transmission, wheels, tires, doors, windshield, or other major part and 24 hours have passed since the property owner informed the police of the vehicle's unlawful presence; and (4) if the lot or parcel on which the vehicle is parked also contains a single family dwelling. *Id.* § 22658(a)(1)-(4) (amended by Chapter 1004).

vehicle from private property without written authorization<sup>13</sup> from a party who is to be present at the time of the removal.<sup>14</sup>

*JWD*

**Transportation and Motor Vehicles; infractions involving operation of vessels**

Harbors and Navigation Code § 88 (repealed and new); §§ 652, 668 (amended); Vehicle Code §§ 9875, 40000.8 (amended).  
AB 1201 (Woodruff); 1991 STAT. Ch. 922

Existing law provides that the Department of Boating and Waterways<sup>1</sup> may issue regulations regarding boats and associated equipment.<sup>2</sup> Existing law states that harbor officers and peace officers are allowed to stop and come alongside vessels.<sup>3</sup> Chapter 922 additionally permits a peace officer or harbor police officer to

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13. See *id.* § 22658(l) (amended by Chapter 1004) (authorizing the owner of the property, a lessee, or an employee or agent to give written authorization).

14. *Id.* Chapter 1004 provides that a towing company may remove a vehicle at its discretion only if it interferes with access to or from private property, is parked within fifteen feet of a fire hydrant, or is in a fire lane. *Id.* Chapter 1004 requires towing companies who tow such vehicles to take a photograph of the vehicle that clearly shows the violation. *Id.* The towing company shall keep two copies of the photograph: one for its records, and one to give to the owner or agent of the owner who claims the vehicle. *Id.* Chapter 1004 provides that a towing company that removes a vehicle from private property without written authorization is liable to the owner of the vehicle for four times the amount of towing and storage charges, along with any other applicable criminal penalties. *Id.*

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1. See CAL. HARB. & NAV. CODE §§ 61-64 (West 1978 & Supp. 1991) (describing the powers and duties of the Department of Boating and Waterways).

2. *Id.* § 652(b) (West 1978). Existing law provides that these regulations must be in conformity with any federal navigation laws or rules promulgated by the United States Coast Guard. *Id.* See *id.* § 651(w) (West Supp. 1991) (defining associated equipment to exclude radio equipment, but include safety equipment, boating accessories, and any system, part, or component sold with the boat or replacement systems, parts or components).

3. *Id.* § 663.6 (West 1991).

order the operators of a vessel which is found to be unsafe to cease its operation.<sup>4</sup>

Under prior law, violations of equipment, operational, and safety regulations were misdemeanors.<sup>5</sup> Prior law also stated that all violations of rules concerning the registration of vessels were misdemeanors.<sup>6</sup> Chapter 922 instead provides that violations of equipment and operation laws and regulations are infractions<sup>7</sup> with specified fines,<sup>8</sup> as are most violations of vessel registration laws and regulations.<sup>9</sup> Chapter 922 states that violations of provisions concerning the defacing, destroying, or altering of a vessel's hull identification number will remain misdemeanors,<sup>10</sup> as will certain violations regarding the operation of vessels.<sup>11</sup>

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4. *Id.* § 652(d) (amended by Chapter 922). Failure to cease operation of a vessel upon order by an authorized officer is a misdemeanor under Chapter 922. *Id.*

5. 1989 Cal. Stat. ch. 1114, sec. 12, at 3569 (enacting CAL. HARB. & NAV. CODE § 668) (amended by Chapter 922).

6. 1983 Cal. Stat. ch. 1092, sec. 379, at 4077 (enacting CAL. VEH. CODE § 40000.8) (amended by Chapter 922).

7. CAL. HARB. & NAV. CODE § 668 (amended by Chapter 922). Those violations which are now infractions, rather than misdemeanors, are the following: (1) Using, or giving permission for the use of, a vessel which does not meet the safety and equipment standards set out by the Department of Boating and Waterways; (2) failure to effectively muffle the exhaust of any engine used on a motorboat; (3) operating a motorboat in such a way as to exceed certain specified noise levels; (4) selling or offering for sale a boat which, when in operation, exceeds certain noise levels; (5) marking the waterways in a manner inconsistent with the rules and regulations for marking waterways set forth by the Department of Boating and Waterways; (6) failure, on the part of a person renting or leasing boats, to keep certain records; (7) delivery of a vessel to a renting party without required safety equipment; (8) failure, on the part of the owner of a storage facility, to keep a written record of all vehicles stored there for more than twelve hours. *Id.* §§ 652(c), 654, 654.05, 654.06, 659, 673, 674, 754 (West 1978), 668(a) (amended by Chapter 922).

8. *See id.* § 668(a) (amended by Chapter 922) (stating that the fine for an infraction under this section shall be no more than \$250).

9. *Id.* § 668 (amended by Chapter 922). *Cf.* OR. REV. STAT. § 153.325(1) (1989) (stating that a boating offense is classified as a boating infraction, rather than a misdemeanor, if it is punishable by only a fine, forfeiture, suspension, or revocation of a license or other privilege, and carries with it no disability or legal disadvantage that would otherwise accompany the conviction of a crime).

10. CAL. VEH. CODE § 40000.8 (amended by Chapter 922). *See id.* § 42001 (West Supp. 1991) (describing penalties for infractions under the Vehicle Code). *Cf.* CONN. GEN. STAT. § 15-142(c) (1990) (stating that a violation of specified registration requirements is an infraction).

11. CAL. HARB. & NAV. CODE § 668(a) (amended by Chapter 922). Violations included as misdemeanors are: (1) Operating a vessel at greater than 5 miles per hour where prohibited; (2) operating a vessel in violation of a federal navigation law or a rule promulgated by the Coast Guard; (3) failure, by a vessel operator, to make a reasonable attempt to move out of a harbor officer's path; (4) use of the distinctive blue light reserved for harbor patrol vehicles; (5) using a water vessel in a reckless or negligent manner; (6) operating a vessel, other than a recreational vessel, with a blood

## Transportation and Motor Vehicles; motor carriers--driver hours of service

Vehicle Code § 34501.3 (amended).

SB 1226 (Russell); 1991 STAT. Ch. 392

Under existing law, the Department of the California Highway Patrol<sup>1</sup> regulates the safe operation of specified heavy vehicles.<sup>2</sup> Existing law prohibits a motor carrier<sup>3</sup> from scheduling a run, or permitting or requiring the operation of a heavy vehicle between points, in a period of time that would necessitate the vehicle's operation at unlawful speeds.<sup>4</sup> Existing law further provides limitations on the number of hours that a driver<sup>5</sup> of a heavy vehicle may drive.<sup>6</sup> Chapter 392 expands existing law by also

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alcohol level of more than 0.01%; (7) failure, by a party involved in an accident, to render aid reasonable under the circumstances to other parties involved in the accident; (8) failure, by the operator of a vessel who damages another's property, to inform the owner of the damage; (9) operating a water vessel or aquaplane in a manner that endangers the life, limb, or property of others; (10) failing to allow a harbor police officer to come alongside one's vessel; (11) violating a written promise to appear in court; or (12) violating various local rules and regulations. *Id.* §§ 655.2, 655.3, 652.5, 655(a), 655.05, 656, 656.1, 658(d)-(e), 663.6, 665, 660(b)-(c) (West 1978 & Supp. 1991).

1. *See* CAL. VEH. CODE § 290 (West Supp. 1991) (defining Department for purposes of Vehicle Code sections 34500 et. seq., as the Department of the California Highway Patrol).

2. *Id.* § 34500 (West Supp. 1991). The Department of the California Highway Patrol is authorized to regulate the safe operation of motortrucks with three or more axles weighing more than 6,000 pounds when empty, truck tractors, buses, schoolbuses, trailers designed for the transportation of more than 10 people, trailers, semitrailers, and other large vehicles. *Id.* *See id.* § 34501(a)(1) (West Supp. 1991) (requiring the department to adopt regulations designed to promote the safe operation of heavy vehicles). *See also id.* § 670 (West 1987) (definition of vehicle).

3. *See id.* § 408 (West 1987) (definition of motor carrier).

4. *Id.* § 34501.3(a)(1) (amended by Chapter 392). Existing law provides that if a driver's logbook reflects a trip between points in a period of time which would have necessitated unlawful speeds to complete the trip, there will be a rebuttable presumption that the driver exceeded the lawful speed. *Id.* 34501.3(b) (amended by Chapter 392). *See id.* § 34506(a) (West Supp. 1991) (providing that it is a misdemeanor to fail to comply with a regulation adopted by the department regarding hours of service of drivers).

5. *See id.* § 305 (West 1987) (definition of driver).

6. *Id.* § 34501.2(a) (West Supp. 1991). The Department of California Highway Patrol must establish limitations on driving hours that are consistent with the hours of service requirement of Title 49 of the Code of Federal Regulations section 395.3. *Id.* A driver may be permitted or required to drive for excessive hours if adverse weather conditions require it, even if the weather conditions were known before the trip began. *Id.* § 34501.2(b)(1) (West Supp. 1991). *See* 49 C.F.R. § 395.3 (1991)

expressly prohibiting a motor carrier from requiring a driver to exceed the applicable limitations on the number of hours that the driver may drive.<sup>7</sup>

*TD III*

## **Transportation and Motor Vehicles; motorcycle helmets**

Vehicle Code § 27803 (amended).

AB 7 (Floyd): 1991 STAT. Ch. 32

Existing law requires all drivers and passengers of motorcycles<sup>1</sup> or motorized bicycles<sup>2</sup> who are under 15 years and 6 months of age to wear safety helmets<sup>3</sup> while on the highway.<sup>4</sup> Chapter 32 requires all drivers and passengers of motorcycles, motorized bicycles, or motor-driven cycles<sup>5</sup> to wear a safety helmet on the highway, regardless of a person's age.<sup>6</sup>

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(providing that interstate drivers may not exceed ten hours of driving within a fifteen hour period without at least eight hours of rest and intrastate drivers may not exceed twelve hours of driving within a sixteen hour period without at least eight hours of rest).

7. CAL. VEH. CODE § 34501.3(a)(2) (amended by Chapter 392). A violation of Chapter 392 will result in a fine of no more than \$1,000 for a first offense, \$2,500 for a second offense, and \$5,000 for third and subsequent offenses. *Id.* §34501.3(c) (amended by Chapter 392).

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1. See CAL. VEH. CODE § 400 (West 1987) (definition of motorcycle).

2. See *id.* § 406 (West 1987) (definition of motorized bicycle).

3. See *id.* § 27802 (West Supp. 1991) (establishing required specifications for helmets).

4. *Id.* § 27803(a) (West 1989) (amended by Chapter 32). See *id.* § 360 (West 1987) (defining a highway as a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel). The definition of highway includes city streets as well as the highway itself. *Id.*

5. See *id.* § 415 (amended by Chapter 928) (definition of motor-driven cycle).

6. *Id.* § 27803(a)-(c) (amended by Chapter 32). By enacting Chapter 32, the legislature intended to provide all drivers and passengers of motorcycles with an added safety benefit when operating a motorcycle, motorized bicycle, or motor-driven cycle. *Id.* § 27803(f) (amended by Chapter 32).

COMMENT

Supporters of Chapter 32 point to the various medical studies which show the tremendous cost to the public of treating injured cyclists<sup>7</sup> and the heightened risk of death when a person rides without a helmet.<sup>8</sup> Those in opposition challenge Chapter 32 on grounds of paternalism<sup>9</sup> and constitutionality.<sup>10</sup> In enacting Chapter 32, California follows numerous other states which have enacted similar helmet safety laws.<sup>11</sup> Although a few lower courts have struck down helmet laws as unconstitutional,<sup>12</sup> these decisions have generally been overruled.<sup>13</sup> The vast majority of courts which have reviewed helmet laws have ruled that there is no

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7. See Rivara, Dicker, Bergman, Dacey, & Herman, *The Public Cost of Motorcycle Trauma*, 260 J. AM. MED. A. 221 (July 8, 1988). In one survey, 63.4% of the care of injured motorcyclists was paid for by public funds. *Id.* at 222.

8. See generally Bachulis, Sangster, Gorrell, & Long, *Patterns of Injury in Helmeted and Nonhelmeted Motorcyclists*, 155 AM. J. SURGERY 708 (May 1988) (documenting an approximately 30% increase in death rate among non-helmeted riders).

9. See Shapiro, *Courts, Legislatures, and Paternalism*, 74 VA. L. REV. 519, 542 (1989) (discussing the governmental impingement on personal autonomy which exists when federal or state statutes require individuals to don protective headgear). See also Weber, *Civil Liberty vs. The Commonwealth*, 51 INS. REV. 9, 38 (1990) (arguing the balance of civil liberty and the potential cost to society arising from injury to those who refuse to wear motorcycle helmets).

10. See generally *Picou v. Gillum*, 874 F.2d 1519 (11th Cir. 1989) (discussing challenges to helmet laws on constitutional grounds and deciding that any constitutional attack on a mandatory helmet law is without merit).

11. See, e.g., ALA. CODE § 2-5a-245 (1990); ARK. STAT. ANN. § 27-20-104 (1987); FLA. STAT. ANN. § 316.211 (West 1990); LA. REV. STAT. ANN. § 32:190 (West 1989); MICH. COMP. LAWS ANN. § 257.658 (West 1990); MISS. CODE ANN. § 63-7-64 (1989); NEV. REV. STAT. § 486.231 (1990); N.C. GEN. STAT. § 20-140.4 (1990); 75 PA. CONS. STAT. § 3525 (Purden Supp. 1990).

12. Compare *State v. Betts*, 21 Ohio Misc. 175, 181, 252 N.E.2d 866, 872 (1969) (holding that a mandatory helmet law violates Federal and State Constitutions) and *People v. Smallwood*, 52 Misc. 2d 1027, 1029-30, 277 N.Y.S.2d 429, 432 (Ct. of Spec. Sessions 1967) (holding that the helmet law is unconstitutional) with *State v. Craig*, 18 Ohio App. 2d 29, 31, 249 N.E.2d 75, 78 (1969) (deciding that a mandatory helmet law is a valid exercise of police power).

13. See, e.g., *Picou*, 874 F.2d at 1522; *People v. Carmichael*, 56 Misc. 2d 388, 392-93, 288 N.Y.S.2d 931, 934-36 (Genesee Cty. Ct. 1968); *People v. Schmidt*, 54 Misc. 2d 702, 703, 283 N.Y.S.2d 290, 292-93 (1967); *People v. Newhouse*, 55 Misc. 2d 1064, 1065-66, 287 N.Y.S.2d 713, 714-15 (Ithaca City Ct. 1968); *People v. Bielmeyer*, 54 Misc. 2d. 466, 470, 282 N.Y.S.2d 797, 801 (Buffalo City Ct. 1967).

constitutional bar to such laws.<sup>14</sup> Accordingly, Chapter 32 should withstand future constitutional attack.<sup>15</sup>

SDW

## **Transportation and Motor Vehicles; notice of reversal of Vehicle Code violation**

Vehicle Code § 1803.3 (amended).  
SB 131 (Robbins); 1991 STAT. Ch. 650

Under existing law, when a court reverses a conviction for specified violations of the Vehicle Code,<sup>1</sup> the court clerk must

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14. See, e.g., *Picou*, 874 F.2d at 1522; *Ritter v. State*, 258 Ga. 551, 551, 372 S.E.2d 230, 231 (1988); *State v. Eighth Judicial Dist.* 101 Nev. 658, 661-63, 708 P.2d 1022, 1024-26 (1985); *Hamm v. State*, 387 So.2d 946, 946 (Fla. 1980); *City of Albuquerque v. Jones*, 87 N.M. 486, 488, 535 P.2d 1337, 1339 (1975); *State v. Zekter*, 13 Wash. App. 24, 26, 533 P.2d 399, 400 (1975); *State v. Cotton*, 55 Haw. 138, 142, 516 P.2d 709, 711 (1973); *State v. Merski*, 113 N.H. 323, 326, 307 A.2d 825, 826 (1973); *Simon v. Sargent*, 346 F. Supp. 277, 278-79 (D. Mass. 1972), *aff'd* 409 U.S. 1020, 1020 (1972); *City of Kenosha v. Dosemagen*, 54 Wis. 2d 269, 271, 195 N.W.2d 462, 463 (1972); *State v. Acker*, 26 Utah 2d 104, 105-06, 485 P.2d 1038, 1039-40 (1971); *Penny v. City of North Little Rock*, 248 Ark. 1158, 1163-64, 455 S.W.2d 132, 134 (1970); *City of Wichita v. White*, 205 Kan. 408, 414, 469 P.2d 287, 291-92 (1970); *State v. Albertson*, 93 Idaho 640, 643, 470 P.2d 300, 303 (1970); *Commonwealth v. Coffman*, 453 S.W.2d 759, 762 (Ky. 1970); *State v. Edwards*, 287 Minn. 83, 89, 177 N.W.2d 40, 42 (1970); *Elliott v. City of Oklahoma City*, 471 P.2d 944, 948 (Okla. Crim. App. 1970); *State v. Cushman*, 451 S.W.2d 17, 20 (Mo. 1970); *State v. Also*, 11 Ariz. App. 227, 230, 463 P.2d 122, 125 (1969); *Arutanoff v. Metro. Gov't of Nashville and Davidson County*, 223 Tenn. 535, 544, 448 S.W.2d 408, 409-12 (1969); *Bouge v. Faircloth*, 316 F. Supp. 486, 489-90 (S.D. Fla. 1970); *State v. Krammes*, 105 N.J. Super. 345, 346, 252 A.2d 223, 223 (1969); *State v. Odegaard*, 165 N.W.2d 677, 680-83 (N.D. 1969); *Everhardt v. New Orleans*, 253 La. 285, 289-90, 217 So.2d 400, 403-04 (1969); *State v. Anderson*, 3 N.C. App. 124, 129, 164 S.E.2d 48, 52 (1968); *State ex rel Colvin v. Lombardi*, 104 R.I. 28, 31, 241 A.2d 625, 627 (1968).

15. *Picou*, 874 F.2d at 1522; *Simon v. Sargent*, 346 F. Supp. 277, 278-79 (D. Mass. 1972), *aff'd*, 409 U.S. 1020, 1020 (1972) (holding that helmet laws are constitutional). Similar challenges based on state Constitutions' guarantees of privacy have been unsuccessful. See, e.g., *State v. Eighth Judicial Dist.*, 101 Nev. 658, 661, 708 P.2d 1022, 1024 (1985) (holding that when a person ventures onto a highway, public safety regulations override an individual right to privacy).

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1. See CAL. VEH. CODE § 1803(a) (West Supp. 1991) (stating that notice of convictions which are required to be communicated to the DMV must be sent within 10 days of the conviction, or within 10 days after sentencing if sentencing was not pronounced in conjunction with the conviction); § 1803(b) (West Supp. 1991) (describing offenses for which a conviction does not have

forward an abstract of the court record to the Department of Motor Vehicles (DMV) within 30 days.<sup>2</sup> Prior law required that upon receiving notice from the court regarding reversal of a conviction, the DMV had to include that information in the abstract of the conviction, as well as in any report or record it made concerning the conviction.<sup>3</sup> Chapter 650 instead requires the DMV to remove conviction records of certain offenses<sup>4</sup> from the driver's record within 30 days of receiving the abstract of the court record in which the judgment was reversed.<sup>5</sup> Chapter 650 also requires the court to give notice to the DMV if it dismisses a failure to appear action of which notice had previously been given to the DMV.<sup>6</sup>

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to be reported to the DMV).

2. *Id.* Existing law also provides that if a person was convicted of a failure to appear pursuant to California Vehicle Code section 40508, notice must be given to the DMV. *Id.* §§ 40509(a), 40509.5 (West Supp. 1991). Courts may elect to use one of two procedures for providing notice to the DMV: First, a magistrate or clerk of the court sends notice to the DMV of failure to appear convictions if a written promise to appear or a lawfully granted continuance of a promise to appear before a court has been violated for 15 days; second, a magistrate or clerk of the court sends notice to the DMV of a failure to appear conviction, but also sends a courtesy notice of this action to the offender, at the address printed on the original written promise to appear, at least 10 days before sending notice to the DMV. *Id.*

3. 1989 Cal. Stat. Ch. 122, sec. 1, at 929 (enacting CAL. VEH. CODE § 1803.3) (amended by Chapter 650). Prior law also required the DMV to provide the information concerning reversal in any report or record it made or furnished concerning the conviction. *Id.*

4. *See* CAL. VEH. CODE § 1803(a) (West Supp. 1991) (stating that convictions of offenses regarding the safe operation of a watercraft, the use or possession of controlled substances, the offense of gross vehicular manslaughter while intoxicated, the use of a commercial motor vehicle in perpetrating a crime, and the safe operation of vehicles are to be reported to the DMV).

5. *Id.* § 1803.3(b) (amended by Chapter 650).

6. *Id.*



## Transportation and Motor Vehicles; total loss salvage vehicles

Vehicle Code §§ 11515, 11540 (amended).  
AB 779 (Bentley); 1991 STAT. Ch. 470

Under existing law, when a motor vehicle<sup>1</sup> is declared a total loss salvage vehicle,<sup>2</sup> the insurance company must forward the certificate of title to the Department of Motor Vehicles (DMV) within ten days of the settlement of the loss.<sup>3</sup> Under Chapter 470, the insurance company, or the salvage yard<sup>4</sup> authorized by the insurance company, must also forward the vehicle license plates to the DMV with the certificate of ownership.<sup>5</sup>

Under existing law, a salvage yard is required to keep records of all vehicles which it receives or disposes of, and notify the DMV of any changes or transfers of ownership.<sup>6</sup> Chapter 470 requires that a salvage yard remove all license plates from vehicles that it acquires, forward them to the DMV, and maintain records of all those license plates which it removes.<sup>7</sup>

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1. See CAL. VEH. CODE § 415 (West Supp. 1991) (definition of motor vehicle).

2. See *id.* § 544 (West 1987) (definition of total loss salvage vehicle).

3. *Id.* § 11515(a) (amended by Chapter 470). The DMV will then issue a salvage certificate of title for the vehicle upon receipt of the title. *Id.* If the owner chooses to retain the salvaged vehicle, the owner must forward the title to the DMV after settlement of the loss by the insurer. *Id.* § 11515(b) (amended by Chapter 470). If the vehicle is uninsured, the owner is still responsible for obtaining a salvage certificate of title from the DMV. *Id.* § 11515(c) (amended by Chapter 470).

4. See *id.* § 543 (West 1987) (definition of salvage pool).

5. *Id.* § 11515(a) (amended by Chapter 470). When an owner retains the salvaged vehicle, the owner must also forward the license plates to the DMV, whether or not the loss is covered by insurance. *Id.* § 11515(b), (c) (amended by Chapter 470). See generally *id.* §§ 4000-6052 (West 1987) (giving standards for registration of vehicles, issuing of title certificates, and compliance with smog regulations). See also *id.* § 4850 (West 1987) (requiring license plates on motor vehicles and providing regulations for issuing license plates).

6. *Id.* § 11540 (amended by Chapter 470). See *id.* § 5900(a) (West Supp. 1991) (providing requirements for notifying the DMV of any changes or transfers in ownership). Cf. *Gates v. Dept. of Motor Vehicles*, 94 Cal. App. 3d 921, 923, 156 Cal. Rptr. 791, 793 (1979) (reviewing whether an auto dismantler's license should have been revoked based on his failure to comply with California Vehicle Code regulations; the court ultimately held that the DMV had not given the dismantler adequate notice of his hearing, and as a result, the dismantler did not lose his license).

7. CAL. VEH. CODE § 11540(b) (amended by Chapter 470).